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Ref. A085/496

PRIME MINISTER

Anglo/Irish Relations: Northern Ireland

Mr Dermot Nally delivered the Irish Government's response to the British proposal of 21 January at a meeting with me on 8 February. He was accompanied by Mr Sean Donlon, Mr Michael Lillis, Mr Andrew Ward and the Irish Ambassador, Mr Noel Dorr. I was accompanied by Mr Robert Andrew, Mr Brennan and Mr Goodall. The discussion was continued at a further meeting on 11 February at which the Irish were represented by Mr Lillis and Mr Dorr and I was accompanied by Mr Brennan and Mr Goodall.

2. A copy of the Irish response, as modified in those two rounds of discussion, is attached. It is largely based on the British proposal of 21 January, and is in form an amended version of that proposal, the text of which is also attached for purposes of comparison. There has been some rearrangement of the order of our text, which raises one presentational point of importance (see paragraph 4 below). For the rest, the main changes are side-lined on the Irish text. At two places in that text (paragraphs 13 and 21) alternative language appears in square brackets. These are places where the British side suggested weaker language which the Irish agreed to consider; but they should be taken as preferring what is described as the Irish text.

3. Since the Irish had based themselves on our own text, we agreed to examine their proposed amendments and additions on the clear understanding that the purpose of the discussion would be to identify, and where possible to reduce, areas of likely difficulty. But we made it clear that this was entirely without commitment on our side, and that there was no question of our



giving British agreement to any of the new wording. The entire text thus remains ad referendum to Ministers on both sides. Our understanding is, however, that the text attached has been seen and approved by the Irish Government.

4. The Irish response alters the balance of the British proposal and introduces additional elements which we shall need to look at very closely. But in general the Irish have moved somewhat closer to the British position, and their text contains a number of positive features. It is based on the British text. It is more modest than any previous Irish set of proposals, and is the least unrealistic of any of the documents which they have put to us in the course of the present series of talks. In particular, it abandons the language of joint authority and limits the Irish Government's role in the proposed arrangements to "putting forward views and proposals". It incorporates, without significant changes, the proposed British language on security co-operation (paragraphs 24 and 25), although this section has been moved to the end. For presentational reasons we should want to see it restored to an earlier place in the text. If we eventually agree to include something on economic and social matters (paragraphs 14 and 15 of the text, on which see the next paragraph), I should like to relegate it to the end of the paper, after the sections on security and legal matters.

5. The Irish have expanded our proposal in a number of ways. The most important, and perhaps the most difficult, change proposed by the Irish is at paragraph 14 of their text, and is also foreshadowed in paragraph 1(b). This would significantly widen the range of subjects which the proposed joint Committee would consider so as to bring in economic and social matters. The proposed extension is limited by a number of qualifications: it would not apply unless and until attempts to achieve devolution had been abandoned; and even then the Committee would be entitled to consider only those policy aspects of economic and social matters which affected the interests of the minority,



plus cross-border co-operation on such matters. But since the prospects for achieving devolution look unpromising, this could in due course result in the Irish Government using the Committee to express its views on most aspects of government in Northern Ireland which are at present the responsibility of the Secretary of State.

6. The other main changes proposed by the Irish are as follows:

a. In paragraph 3 the sentence which appeared in the British proposal that "there would be a small Joint Secretariat which could be located in Belfast" has been replaced by two sentences; "There would be a small Joint Secretariat. The Irish Government would maintain an office in Belfast for the purpose of these arrangements". This would present difficulties, and we shall have to make sure that any office the Irish Government establishes in Belfast is seen clearly as part of the joint secretariat envisaged in the British proposal.

[Difficult]

b. Paragraph 5 contains a statement of the objectives of the proposed Joint Committee in terms which echoes the language of the Forum Report and of the Chequers Communiqué. This is presentationally important for the Irish. It is difficult to object to its sentiments, but the rhetoric will need careful scrutiny.

c. Paragraph 6 would commit the new body to considering the scope for joint action by the two Governments to promote "social and economic reconstruction" on both sides of the border. The Irish Government envisage setting up a fund to attract money from the United States and from Europe for this purpose. It could be argued that this was extraneous to the main purposes of the present exercise, and could best be considered separately.



d. Paragraph 7 endorses present British Government policy on devolution. From our point of view this is a helpful addition.

e. Paragraph 8 would allow the Irish to use the proposed Joint Committee to make proposals on the modalities of devolution. The Irish Government will in any case express views to us on these matters; and, if (as is envisaged) the Committee came into existence before devolution was achieved, it would in practice be inevitable that the Irish would use it to express their views on the modalities of devolution. Indeed, from our point of view they might just as well use this channel as any other. But the Unionists would no doubt see a provision to this effect in any intergovernmental agreement as licensing Irish Government interference in the internal affairs of the province.

f. Paragraph 11 appears innocuous.

g. Paragraph 26 reinstates the idea of an Anglo-Irish Parliamentary Body, but makes it dependent on the agreement of the Parliaments in Westminster and Dublin. It is not strictly relevant to this particular exercise; but it is important to the Taoiseach.

7. The alternative formulations at the beginning of paragraph 13 and the beginning of paragraph 21 are, I think, self-explanatory. In the first case the Irish would like to strengthen the language of the British proposal in relation to the Irish Government's ability to influence appointments (without however seeking to write in any right of veto over the Secretary of State's decisions). A similar point arises at the beginning of paragraph 21, where the Irish want, if possible, to commit the two Governments to establish a Joint Court as distinct from merely considering proposals to do so (which is as far as we have been able to go in view of Lord Lowry's



objections). The rest of the language in this paragraph is drawn from the British position paper of 1 November 1984 (where it was attributed to the Irish side) but reflects a retreat from the Irish preference for a "single" court to try terrorists and human rights cases throughout Ireland.

8. Neither the British proposal of 21 January nor the Irish response addresses the earlier Irish offer to seek to amend Articles 2 and 3 of the Irish Constitution. You will recall that at your meeting on 16 January it was agreed that in putting forward our proposal we should not suggest that the Irish Government might drop their offer of a constitutional referendum, but should leave it to them to make that judgment. At my meeting with Mr Nally on 8 February, I accordingly made it clear that we remained very interested in the Irish offer and would welcome it as part of a package based on our proposal of 21 January.

9. Mr Nally indicated that this was a matter on which he had no instructions. Subsequently however he told me privately that Irish Ministers took the view that the proposals now under discussion would not be a sufficient basis on which to carry a constitutional referendum. For that to be politically possible, the role envisaged for the Irish Government would not only need the extension of the remit of the new arrangements to cover policy aspects of economic and social matters but would also have to go beyond the right "to put forward views and proposals". Mr Nally said that Irish Ministers would be prepared to consider instead some sort of reaffirmation of the Sunningdale Declaration; but he did not explain how this, taken in conjunction with an agreement on the lines now under discussion, would be likely to stand up to challenge in the Irish Supreme Court if the Constitution were left unamended. This is a point on which, if Ministers agree, I would propose to probe him further when we next meet.



10. The Irish side stressed the Taoiseach's concern to move forward on the present basis and hoped for early British comments on their response. I made it clear to Mr Nally that British Ministers would want to weigh the implications of what was now on the table very carefully; and I reminded him that the two Secretaries of State, at their meeting with Mr Barry on 4 February, had warned against any attempt to rush things. But I thought that it should be possible to give the Irish at least some preliminary reactions to their response in the course of next week; and we have provisionally agreed to meet for that purpose in Dublin on 19 February.

[Not ideal: the day before your Central Council speech].  
11. Mr Nally also said that the Taoiseach would be in London for a private engagement on 22 March and would welcome the opportunity of an informal meeting with you then. I undertook to convey this offer to you without encouraging him to think that you would want to take it up. I pointed out that you would be meeting the Taoiseach in any case at the European Council on 29-30 March; and that two meetings between you in such rapid succession would attract attention and be likely to raise expectations.

12. At your meeting on 14 February I should be grateful for guidance on the line Ministers would wish me to take with the Irish next week with regard to:

- a. the order in which the subjects are treated in the paper (paragraph 4 above)
- b. the proposed changes and additions to the British text summarised in paragraphs 5-7 above;
- c. the extent to which I should press for an Irish constitutional referendum or explore possible alternative ways of strengthening the Irish Government's recognition of Northern Ireland's place as part of the United Kingdom; and



d. the pace at which our talks with the Irish should be pursued and the timing of future meetings between you and the Taoiseach.

13. I am sending copies of this minute to the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland.

*R*

Approved by  
ROBERT ARMSTRONG  
*and signed in his absence.*

13 February 1985

13 February 1985

Irish Response to British Proposal

Introductory

Rather than take a new approach, it has been decided to attempt to outline Irish ideas through a redrafting of the British proposal to take account of concerns both of substance and of presentation.

TEXT

1. There would be established within the framework of the Anglo-Irish Intergovernmental Council a Co-ordinating Committee to deal on a regular basis and in relation to Northern Ireland with:

a. political matters and human rights questions;

b. economic and social matters;



- c. issues arising from the interaction of the community and the security system;
- d. The Courts and certain legal matters;
- e. security co-operation,

Other topics might be added by agreement.

2. Unlike the existing AIIC machinery this Committee would be primarily concerned with North/South rather than East/West relationships and would meet on a regular rather than an ad hoc basis. The British Government would accept that the Irish Government would put forward views and proposals on matters relating to Northern Ireland within the body's remit. Both Governments would accept that, in the interest of promoting peace and stability, every effort would be made through the Co-ordinating Committee to resolve any differences rather than simply reporting them to the two Governments. Attention at the highest level would thus be given to the matters in question but there would be no derogation of sovereignty on the part of either the United Kingdom or the Republic. The focus of the Committee's work would be mainly in

Northern Ireland; but some of the matters under consideration would involve co-operative action in both parts of the island of Ireland, and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland might also be found to have an application by the Irish authorities in the Republic.

3. The Co-ordinating Committee would meet at Ministerial or official level, as required. There would be regular and frequent Ministerial meetings; and special meetings could be convened when necessary at the request of either side. Officials might meet in Sub-Committees. Membership would be small and flexible. There would be a small joint secretariat. The Irish Government would maintain an office in Belfast for the purpose of these arrangements. When the Co-ordinating Committee met at Ministerial level the Secretary of State for Northern Ireland and an Irish Minister designated as the Permanent Irish Ministerial Representative would be joint Chairmen. Other British and Irish Ministers could attend meetings as appropriate. Ministers would be accompanied by their officials and professional advisers: for example, when

questions of security policy or security co-operation were being addressed they could be accompanied by the Chief Constable of the Royal Ulster Constabulary and the Commissioner of the Garda Siochana as appropriate.

4. The Co-ordinating Committee (and its Sub-Committees of officials) could meet in separate modes for each of its main areas of interest, and additional members, appropriate to the subject matter, would also attend; thus when it met in its legal mode the Attorneys General might attend.

5. The stated objectives of the Co-ordinating Committee, in relation to matters coming within its remit, would be (i) to constitute a framework for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and (ii) to work for peace, stability and prosperity throughout Ireland by promoting through this framework reconciliation, respect for human rights and the development of economic, social and cultural co-operation.

6. The Co-ordinating Committee would examine the scope for joint action to promote the social and economic reconstruction and improvement of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, including the possibility of securing wider international support to that end.

7. It is the declared policy of the British Government that responsibility in respect of certain matters within the remit of the Secretary of State for Northern Ireland should be devolved within Northern Ireland on a basis which would secure widespread acceptance throughout the community. The Irish Government support that policy.

8. If full devolution had not taken place, the Co-ordinating Committee would constitute a framework within which the Irish Government could put forward views and proposals affecting the interest of the minority community on the modalities of devolving power in Northern Ireland on a basis which would secure widespread acceptance throughout the community.

Political Matters and Human Rights issues

9. The Co-ordinating Committee would concern itself with measures to recognise and accomodate national identity, to protect human rights and to prevent discrimination. It would be accepted that the focus would be on Northern Ireland, but the possible application of any such measures by the Irish Authorities in the South would not be excluded.

10. Measures to be considered in this area in respect of Northern Ireland include the use of the Irish language and changes in electoral arrangements.

11. The Co-ordinating Committee would consider measures to develop the cultural heritage of both traditions throughout Ireland.

12. The Co-ordinating Committee would consider the benefits which might be expected from some form of Bill of Rights for Northern Ireland as well as any difficulties which this might present. If a Bill

of Rights were judged to be desirable in Northern Ireland the Committee might also consider whether similar action should be taken in the Republic.

13. The Co-ordinating Committee would

[Irish text:

constitute a framework within which the Irish Government could put forward views and proposals on]

[British text:

provide opportunities for the expression of views and proposals by the Irish Government on]

appointments to be made by the Secretary of State for Northern Ireland to the:

Police Authority of Northern Ireland

Police Complaints Board

Fair Employment Agency

Equal Opportunities Commission

Standing Advisory Commission on Human Rights

Economic and Social Matters

14. Should it prove impossible to achieve or sustain devolution on a basis which would secure widespread acceptance throughout the community, the Co-ordinating Committee would for the time being constitute (1) a framework within which the Irish Government could put forward views and proposals on policy aspects of matters under this heading affecting the interests of the minority community which were susceptible of devolution and in relation to which the Secretary of State continued to exercise responsibility, and (2) a framework for the promotion of co-operation between North and South in Ireland in relation to cross-border aspects of those matters.

15. It is recognised that, if responsibility were devolved in respect of certain matters under this heading currently within the remit of the Secretary of State, there would need to be machinery for practical co-operation between the responsible authorities North and South in respect of cross-border aspects of those issues.

Issues Arising from the Interaction of the  
Community and the Security System.

16. In this mode, the Co-ordinating Committee would consider:

(a) security policy;

(b) relations between the security forces and the Community;

(c) prisons policy.

(a) Security Policy

17. The Co-ordinating Committee would address the security situation at its regular meetings. This would provide an opportunity to address policy issues, serious incidents and forthcoming events (eg parades and processions).



(b) Relations between the Security Forces and the Community

18. The Co-ordinating Committee would consider relations between the security forces and the Community, with particular reference to the minority community in Northern Ireland. With a view to promoting greater confidence in the security system, a programme of action might be put in hand which would include:

- i. the establishment of local consultative machinery;
- ii. training in community relations;
- iii. crime prevention schemes involving the community;
- iv. improvements in arrangements for handling complaints;
- v. action to increase the proportion of Catholics in the RUC.

It would be accepted by both sides that these measures would be directed primarily towards Northern Ireland, with the object of making the security forces more readily accepted by the nationalist community there, but that some of them might be developed by the Irish authorities in ways which might also have an application in the South.

(c) Prisons Policy

19. The Co-ordinating Committee would also be able to consider policy issues in the prisons. Individual cases could be raised as appropriate, so that explanations could be given or inquiries instituted.

The Courts and Certain Legal Matters

20. In this mode, the Co-ordinating Committee would deal with issues of concern to both countries relating to the enforcement of the criminal law.

21. The Co-ordinating Committee [British text: would consider and as appropriate make proposals for the establishment of] [Irish text: would devise the necessary steps to establish] a Joint court comprising three judges for each case for the trial either in the North or in the South of persons accused of terrorist crimes. These judges would be drawn from a panel of judges half of whom would be drawn from each jurisdiction. When sitting in Northern Ireland, one of the three judges would be from the Republic and the Court would exercise its jurisdiction under the law of the United Kingdom. When sitting in the Republic, one of the three judges would be from Northern Ireland and the Court would exercise its jurisdiction under the law of the Republic. The Co-ordinating Committee could also have the competence to examine the desirability and possibility of devising island-wide judicial and legal institutions which would help to promote peace and stability.

22. The Co-ordinating Committee would examine whether there are areas of the criminal law applying in the north and in the South respectively which might be harmonised with advantage to both.

The Body would also be concerned with the oversight and review of arrangements between North and South for extradition and extra-territorial jurisdiction.

Security Co-operation

23. The Co-ordinating Committee would have no operational responsibilities; responsibility for police operations would remain with the heads of the respective police forces, and the Chief Constable of the Royal Ulster Constabulary would maintain his existing links with the Secretary of State and the Commissioner of the Garda Siochana his accountability to the Minister of Justice.

24. With a view to enhancing co-operation between the security forces of the two Governments, the Co-ordinating Committee would set in hand a programme of work to be undertaken by the Chief Constable and the Commissioner and groups of officials in such areas as\*:

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\*In endorsing this programme of work the Irish Government note that it would not be desirable for what follows in i.-v. to be published in full in their present form.

- i. the exchange of intelligence and the preparation of agreed threat assessments;
- ii. the establishment of effective liaison structures between the security forces of the two countries;
- iii. technical co-operation, eg in communications, forensic matters and control of explosives;
- iv. training and the exchange of personnel;
- v. cross-border co-operation and co-ordination of operational resources.

25. Subject to the agreement of the Houses of Parliament at Westminster and of the Oireachtas in Dublin, an Anglo-Irish Parliamentary Body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981 could be established.

BRITISH PROPOSAL

There would be established within the framework of the Anglo-Irish Intergovernmental Council a joint body to consider on a regular basis and in relation to Northern Ireland;

- a. legal matters;
- b. relations between the police and the community;
- c. prisons policy;
- d. security co-ordination;
- e. political and human rights questions

Other topics might be added by agreement.

2. Unlike the existing AIIC machine this body would be primarily concerned with North/South rather than East/West relationships and would meet on a regular rather than an ad hoc basis. The British Government would accept that the Government of the Republic of Ireland could put forward views on matters relating to Northern Ireland within the body's remit. In accordance with the general practice of the AIIC, every effort would be made to resolve any differences rather than simply reporting them to the two Governments. Attention at the highest level would thus be given to the matters in question; but there would be no derogation of sovereignty on the part of either the United Kingdom or the Republic. The focus of the body's work would be mainly in Northern Ireland; but some of the matters under consideration would involve co-operative action in both parts of the island of Ireland, and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland might also be found to have an application in the Republic.

3. The body would meet at Ministerial or official level, as required. There would be regular Ministerial meetings, say once every three months; and special meetings could be convened when necessary at the request of either side. Officials might meet in Sub-Committees more frequently. Membership would be small and flexible. There would be a small joint secretariat which could be located in Belfast. When the body met at Ministerial level the Secretary of State for Northern Ireland and the appropriate Minister from the Republic would be joint Chairmen. They would be accompanied by their Permanent Secretaries and by other officials and professional advisers.

4. The body (and its Sub-Committees of officials) could meet in separate modes for each of its main areas of interest, and additional members, appropriate to the subject matter, would attend; thus when it met in its legal mode the Attorneys General might attend.

#### Legal Matters

5. In this mode, the body would deal with issues of concern to both countries relating to the enforcement of the criminal law. A Sub-Committee could be established to examine whether there are areas of the criminal law applying in Northern Ireland and the Republic respectively which might be harmonised with advantage to both countries. Another Sub-Committee could consider whether there would be advantage in setting up any system of joint or mixed courts for terrorist crimes; and, if so, what form such a system might take. The body would also be concerned with the oversight and review of arrangements between the Republic and Northern Ireland for extradition and extra-territorial jurisdiction.

Relations between the Police and the Community

6. In this mode, the body would consider relations between the police and the community, with particular reference to the minority community in Northern Ireland. A programme of action might be put in hand which would include:

- i. the establishment of local consultative machinery;
- ii. training in community relations;
- iii. crime prevention schemes involving the community;
- iv. improvements in arrangements for handling complaints;
- v. action to increase the proportion of Catholics joining the RUC.

It would be accepted by both sides that these measures would be directed primarily towards Northern Ireland, with the object of making the police more readily accepted by the nationalist community there, but that some of them might be developed in ways which might also have an application in the Republic.

Prisons Policy

7. The body would also be able to discuss policy issues in the prisons. Individual cases could be raised as appropriate, so that explanations could be given or inquiries instituted.

Security Co-ordination

8. The body would consider at its regular meetings the security situation, with the Chief Constable and the Commissioner in attendance. This would provide an opportunity to discuss serious incidents, and forthcoming events (eg parades



and processions), to identify policy issues, and to enhance co-operation between the security forces of the two Governments in the common fight against terrorism. The body would have no operational responsibilities; responsibility for police operations would remain with the heads of the respective police forces, and the Chief Constable of the RUC would maintain his existing links with the Secretary of State and the Commissioner of the Garda Siochana his accountability to the Minister of Justice.

9. The body would set in hand a programme of work to be undertaken by the Chief Constable and Commissioner and groups of officials in such areas as:

- i. the exchange of intelligence and the preparation of agreed threat assessments;
- ii. the establishment of effective liaison structures between the security forces of the two countries;
- iii. technical co-operation, eg in communications, forensic matters and control of explosives;
- iv. training and the exchange of personnel;
- v. cross-border co-operation and co-ordination of operational resources.

#### Political and Human Rights Questions

10. In this area the Committee, or a Sub-Committee, would concern itself with measures to recognise national identity, to protect human rights and to prevent discrimination. Here again, it would be accepted that the focus should be on Northern Ireland, but the possible application of any such measures to the Republic would not be excluded.

11. Measures to be considered in this area in respect of Northern Ireland include the use of the Irish language (eg in street names), changes in electoral arrangements, and the possibility of removing restrictions on the flying of flags. Consideration might be given to the benefits which could be expected from some form of Bill of Rights for Northern Ireland and the difficulties which this would present. If a Bill of Rights were judged to be desirable in Northern Ireland the Committee might also consider whether similar action should be taken in the Republic.

12. The Committee would provide opportunities to ensure that Irish views were taken into account by the Secretary of State for Northern Ireland in making the appointments to:

Police Authority for Northern Ireland  
Police Complaints Board  
Fair Employment Agency  
Equal Opportunities Commission  
Standing Advisory Commission on Human Rights

Devolved Government

13. The arrangements described in this note would be largely unaffected by the creation of a devolved government in Northern Ireland. The exceptions are:

- i. in paragraph 12, appointments to the Fair Employment Agency and the Equal Opportunities Commission (but not any of the other appointments) would fall to the devolved government, and the Secretary of State for Northern Ireland would be unable to offer to discuss them;
- ii. some, but not most, of the issues arising under paragraph 10 would also be for the devolved government

rather than the Secretary of State; but major issues such as electoral law, the law on discrimination and any Bill of Rights would remain within the Secretary of State's responsibilities, and available for discussion in the Standing Committee.